

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

NOTICE OF HEARING

No. 100-4-2

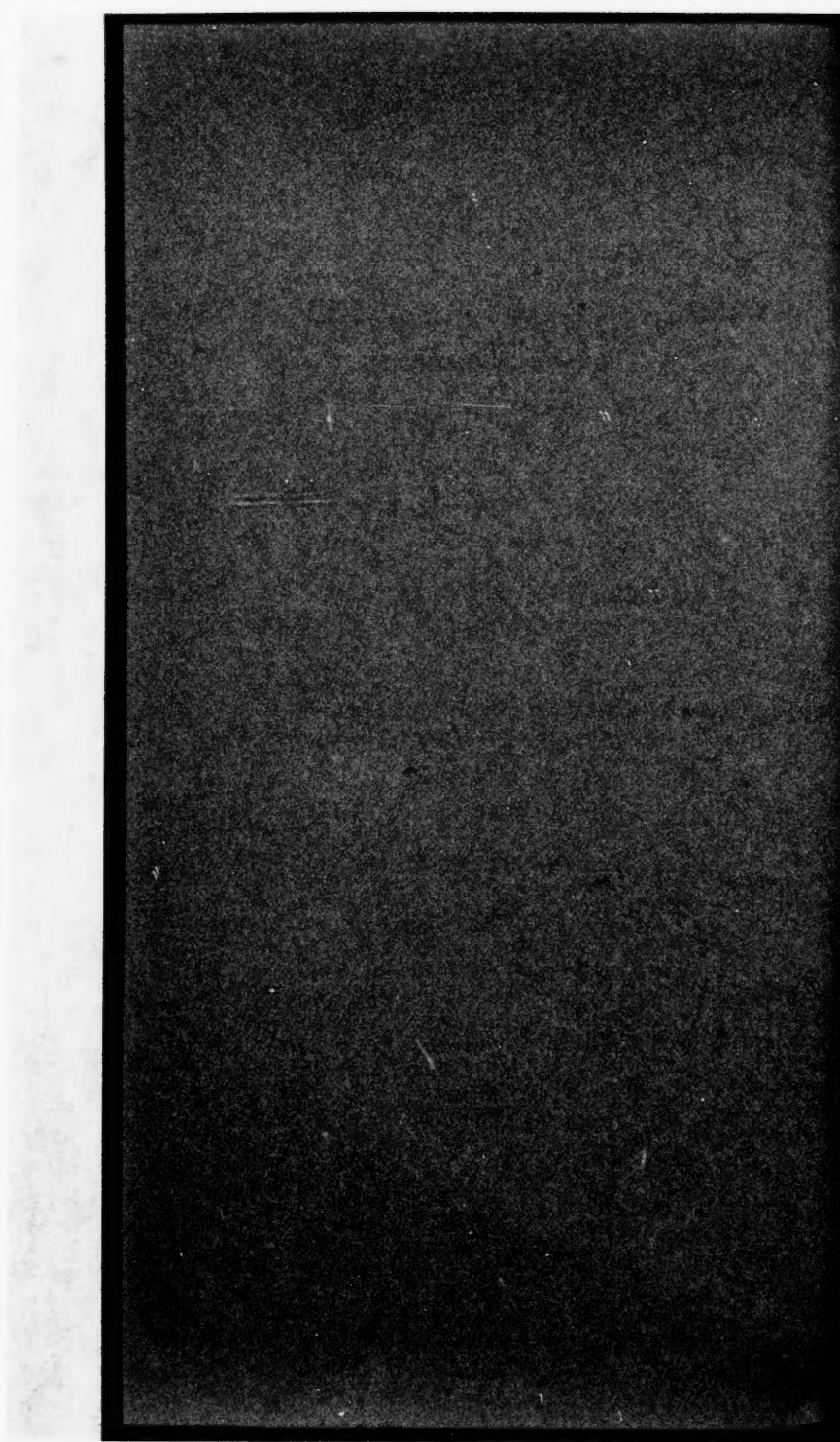
WILLIAM H. WENDE, APPELLANT

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO
CHARLES H. WACKER, MARTIN A. HYERMAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

RECEIVED JANUARY 10, 1910

CLERK



(21,980.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 754.

WILLIAM H. MINER, APPELLANT,

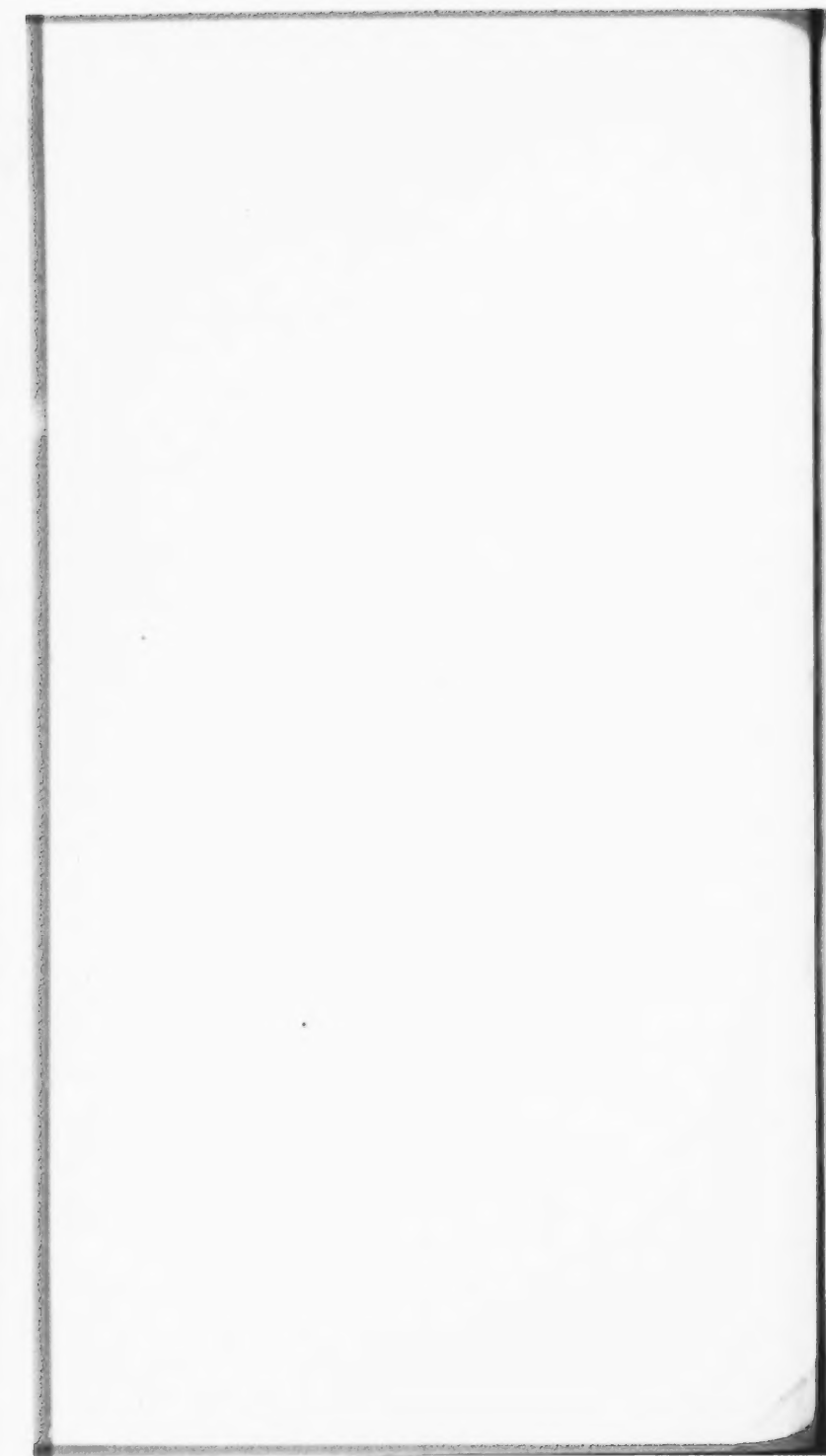
vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO,
CHARLES H. WACKER, MARTIN A. RYERSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern
District of Illinois, Eastern Division.

29863.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H.
Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B.
Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin
Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Fore-
man, Charles L. Hutchinson, Edward A. Shedd, Frederick W.
Crosby, Ernest A. Hamill, and B. C. Sammons.

Messrs. Peckham, Brown, Packard & Walsh, Solicitors for Com-
plainant, Mr. Edward Osgood Brown, of Counsel.

Messrs. Judah, Willard, Wolf & Reichmann, Solicitors for De-
fendants, Mr. Noble B. Judah, of Counsel.

2 Pleas in the Circuit Court of the United States for the
Northern District of Illinois, Eastern Division, in Chancery
sitting at the United States Court room, in the City of Chicago, in
said District and Division, before Hon. Christian C. Kohlsaat, Cir-
cuit Judge of the United States for the Seventh Judicial Circuit, on
Monday, the twenty-fourth day of January, in the year of our Lord
one thousand nine hundred and ten, being one of the days of the
regular December term of said Court, begun Monday, the twentieth
day of December, 1909, and of our Independence the one hundred
and thirty-fourth year.

H. S. STODDARD, *Clerk*.

3 In the Circuit Court of the United States for the Northern
District of Illinois, Eastern Division.

29863.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H.
Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B.
Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin
Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Fore-
man, Charles L. Hutchinson, Edward A. Shedd, Frederick W.
Crosby, Ernest A. Hamill, and B. C. Sammons.

Be it remembered, that on this day to-wit: the nineteenth day of
January, 1910, come- the complainant in the above entitled cause
by his solicitors and filed in the clerk's office of said Court his certain
Bill of Complaint in words and figures following to-wit:

- 4 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulbird, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill, and B. C. Sammons.

Bill of Complaint.

Peckham, Brown, Packard & Walsh, solicitors for complainant; Edward Osgood Brown, of counsel.

- 5 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulbird, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons.

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois, Sitting in Equity:

William H. Miner, a citizen of the State of Illinois and a resident of the City of Chicago in the said state and in the Eastern Division of the Northern District of Illinois aforesaid, brings this, his bill of complaint in behalf of himself and all other stockholders who are similarly situated, of the Corn Exchange National Bank of Chicago, hereinafter named and described, and who shall be entitled to avail themselves of the benefit of this suit, against the Corn Exchange National Bank of Chicago, a corporation, created and existing under and by virtue of the laws of the United States, located and having its principal office for the transaction of business in the City of Chicago, in the Eastern Division of the Northern District of Illinois, and Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulbird, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair,

Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons, all citizens of the State of Illinois, and residents of said Eastern Division of the Northern District of said state, and who are as hereinafter set forth, directors of the said corporation, the Corn Exchange National Bank of Chicago.

And thereupon your orator complains and represents unto your Honors as follows:

First. Your orator shows that the defendant the Corn Exchange National Bank of Chicago (hereinafter sometimes designated as "Corn Exchange National Bank"), is a corporation duly organized and existing under an Act of Congress called The National Bank Act, approved by the President on June 3, 1864, and subsequently amended.

By said act it is authorized to exercise by its Board of Directors, or duly authorized agents, all such powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt, by receiving deposits, by buying and selling, exchange, coin and bullion, by loaning money on security and by obtaining, issuing and circulating notes.

It is also authorized by said act, to purchase, hold and convey such real estate as shall be necessary for its accommodation in the transaction of its business, and such as may be mortgaged or conveyed to it or purchased by it in satisfaction of or security for debts previously contracted to it.

And your orator shows that under the provisions of said act it is obliged to pay and does semi-annually pay to the Treasurer of the United States a tax on its circulating notes, and that under said act and the Statutes of the State of Illinois, it is obliged to pay and does pay annually to the proper officers of the State of Illinois, taxes on its real estate.

Your orator further shows that under said act and the Statutes of Illinois, the shares of the capital stock of the said defendant corporation are taxable by the authority of the State of Illinois as the personal property of the owners and holders of said shares, and that its officers are required to retain any dividends belonging to said shareholders until said taxes are paid.

Second. Your orator shows that the net income of the defendant the Corn Exchange National Bank, received by it from all sources during the year ending December 31, 1909 (exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies subject to the Corporation Tax so-called alleged as herein-after set forth to be authorized and provided for in Section 38 of the Act of Congress entitled "An Act to provide revenue, equalize duties and encourage industries of the United States and for other purposes," approved August 5, 1909), amounted to the best of your orator's knowledge, information and belief to more than \$500,000.

Said net income of at least \$500,000, is the amount remaining after deducting from the gross amount of the income of said de-

defendant Bank all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, interest actually paid within the year on deposits, all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof or by the Government of any foreign country as a condition to carrying on business therein and all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations or insurance companies, subject or purporting to be subject to the so-called "Corporation Tax" above described.

And your orator shows that for many years the net income of the defendant the Corn Exchange National Bank computed as
9 above set forth has been more than \$500,000 annually, and that as your orator is advised and believes it will continue so to be in the future for successive calendar years, beginning with the year 1910.

Third. Your orator shows that the said defendant the Corn Exchange National Bank is the owner of a parcel of real estate or a chattel real in the form of a leasehold interest for 99 years in certain very valuable land in the City of Chicago, on which it has erected a banking building, of which it is the owner, for its immediate accommodation in the transaction of its business, and that it was obliged to and did, in the erection of said building, for the purpose of making an economical improvement which should be productive and prevent its own rent from being excessive, construct a building of which several floors above the ground floors are rented to various tenants from whom it derives a large income and rent; that the said leasehold and building thus belonging to the defendant Bank are of the value of nearly two million and a half dollars and that the income derived therefrom by the defendant Bank amounts to not less than ninety thousand dollars per annum, after paying or deducting all national, state, county, school or municipal taxes.

Fourth. Your orator shows that the said defendant the Corn Exchange National Bank is the owner of bonds of the United States to the amount of \$1,175,000, and of United States Govern-
10 ment Territorial Bonds of the Philippines and Hawaii to the amount of \$530,000 and that it derives an income of about \$24,000 annually from its investments in bonds of the United States and of about \$20,000 from its investments in the territorial bonds aforesaid.

Fifth. Your orator further shows that the affairs, business and property of the said defendant Company are managed and conducted by fifteen directors and that the defendants Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hammill

and B. C. Sammons are all citizens of the State of Illinois and residents of said Eastern Division of the Northern District of said state, and that said defendants are the directors of the said corporation, the Corn Exchange National Bank, duly elected as such, and that they are now acting in that capacity and managing and conducting all and singular the affairs and business of said defendant Bank.

Sixth. Your orator further shows that he is a citizen of the State of Illinois and a resident of the City of Chicago in the said state and in the Eastern Division of the Northern District of Illinois aforesaid; that prior to October 3, 1906, he became the owner and

11 registered holder of shares of the capital stock in said Corn Exchange National Bank, and that he has ever since been and still is a stockholder therein, owning and holding in his own right three hundred shares of its capital stock, the value of which three hundred shares exceeds the sum of \$120,000. The capital stock of said Corn Exchange National Bank is divided among a large number of different persons who as such stockholders constitute a large body, and this suit is for an object common to them all.

Your orator therefore brings this suit in his own name and in his own behalf as a stockholder in said Corn Exchange National Bank and also as a representative and on behalf of such of the other stockholders similarly situated and interested as may choose to intervene and become parties hereto.

Seventh. Your orator further shows that as he is informed and verily believes, the defendant the Corn Exchange National Bank and a majority of its directors who are managing and conducting its property, business and affairs as aforesaid, have determined that under and by virtue of the alleged authority of the provisions of an Act of Congress of the United States entitled "An Act to Provide Revenue, Equalize Duties and Encourage the Industries of the United States, and for Other Purposes," approved August 5, 1909, the said defendant the Corn Exchange National Bank is liable to

12 pay and that they intend to pay for it to the United States on or before the thirtieth day of June, 1910, a tax equal to one per centum upon the entire net income of the said defendant Bank over and above five thousand dollars received by it from all sources during the calendar year ending December 31, 1909, exclusive of amounts received by it as dividends upon the stock of other corporations, joint stock companies or associations or insurance companies subject to the same alleged tax, including the income derived from the interest in real estate which it holds as above set forth, and from the bonds of the United States, and from the other public bonds, state and municipal, of which it is the owner.

Eighth. Your orator further shows that as he is informed and verily believes, in alleged compliance with the requirements of the Act of Congress aforesaid, the defendant the Corn Exchange National Bank and its said directors have avowed their intention and purpose voluntarily to make and file with the collector of internal revenue for the First District of Illinois, prior to the first day of March, 1910, a statement or return under oath of its president,

vice-president and other principal officer, and of its cashier or assistant cashier, setting forth:

(a) The total amount of its paid up capital stock outstanding on December 31, 1909.

(b) The total amount of its bonded or other indebtedness on said date.

(c) The gross amount of its income received during the year 1909 from all sources and the amount received by it within the year by way of dividends upon stock of other corporations, joint stock companies or associations or insurance companies pur-
13 porting to be subject to the alleged "Corporation Tax" as above described.

(d) The total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of its business and properties within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition of its continued use or possession of any of its property.

(e) The total amount of all its losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property.

(f) The amount of interest actually paid by it within the year on its bonded or other indebtedness, stating separately all interest paid by it within the year on deposits.

(g) The amount paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, and

(h) The amount of its net income after making the deductions which the said Act of Congress heretofore described prescribes shall be made from its gross income to ascertain its net income—said deductions being the amounts of the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business, all losses sustained during the year and not compensated by insurance or otherwise, including an allowance for the depreciation of property, interest paid within the year on its bonded or other indebtedness and the interest actually paid by it within the year on deposits, all sums paid for taxes during the year and all amounts received within the year as dividends upon stocks of other corporations, joint stock companies or associations or insurance companies subject to the alleged tax.

14 Ninth. Your orator further shows that he is informed and verily believes that the defendant, the Corn Exchange National Bank, and a majority of its directors who are managing and conducting its affairs as aforesaid, also take the position that for each successive year after 1909 the said defendant Bank will be liable to pay and that they intend voluntarily to pay for it to the United States on or before the thirtieth day of June in each successive year a tax equal to one per centum upon the entire net income of the said defendant Bank over and above five thousand dollars, computed and calculated as in the Eighth Paragraph of this bill set forth, and that the said defendant, the Corn Exchange National Bank, and its said

directors, propose voluntarily to make and file with the Collector of Internal Revenue for the Northern District of Illinois, prior to the first day of each successive year—after 1910—a statement or return for the year ending on the preceding 31st of December, showing the same matter and items as in said Eighth Paragraph of this bill it is alleged that they intend to make and file with said Collector for the year ending December 31, 1909.

Tenth. Your orator avers that the provisions of said Act of Congress of August 5, 1909, as above set forth, which are found in the Thirty-eighth Section thereof, and which purport to render liable the defendant corporation and all other corporations, joint stock

companies or associations organized for profit and having a
15 capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia (with the exception of certain organizations, associations and corporations which do not include the defendant corporation or any corporation of its nature and class), to pay annually a tax of one per centum upon the entire net income over and above five thousand dollars received by it from all sources during each year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the same tax, or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock or other corporations, joint stock companies or associations or insurance companies subject to the same tax (the said tax being denominated in said Section 38 of the Act of Congress aforesaid as "a special excise tax with respect to the carrying on or doing business" by corporations, joint stock companies or associations and insurance companies "equivalent to one

per centum upon the entire net income over and above five
16 thousand dollars," etc.), are unconstitutional, null and void, and furnish no justification to the defendant corporation or its directors for the payment of said tax or for the returns to the Collector of Internal Revenue, purporting to be required by said Section 38, which payment and returns the defendant corporation and its directors nevertheless are threatening and purposing to make, both for the year 1909 and subsequent successive years, claiming that they are required so to do by said provisions of said Act of Congress.

Eleventh. Your orator (without conceding that the said provisions of the Act of Congress of August 5, 1909, purporting to levy a tax on corporations as above described, which tax will be for convenience hereafter in this bill designated merely as the Corporation Tax, are otherwise constitutional or valid, but protesting that in other respects than in those particularly enumerated in this bill he

is advised and believes them to be unconstitutional, invalid and therefore null and void as applied to the defendant corporation) avers that the provisions of said Corporation Tax incorporated in said Act of Congress are in conflict with the provisions of the Constitution of the United States and are null and void in the particulars and for the reasons set forth in the paragraphs from the Thirteenth to the Twentieth, inclusive, of this bill.

17 Twelfth. Your orator avers that the said Corporation Tax is a direct tax in respect of the real estate held and owned by the defendant, the Corn Exchange National Bank, and in respect to its personal property, and that said direct tax is not in and by said act apportioned among the several states according to their population, as required by Section 2 of Article I of the Constitution of the United States and by Paragraph Four of Section Nine of Article I of the Constitution.

Thirteenth. Your orator also avers that if the said Corporation Tax so incorporated in said Act of Congress be held not to be a direct tax, but as denominated in the act, fallaciously, as your orator is advised and believes, "a special excise tax," or falls under any denomination of duties, imposts or excises or is any other than a direct tax, then its provisions are nevertheless unconstitutional, null and void in that they are not uniform throughout the United States, as is specifically and explicitly required in and by Section Eight of Article I of the Constitution of the United States as to all "duties, imposts and excises," and as is implicitly required by the Constitution of the United States and the principles of free government as to all taxes, so far as to prevent an arbitrary and unreasonable classification of persons to be subjected to any particular tax.

A. Your orator avers that the said Corporation Tax is not uniform as to property, class or subject in that it is imposed not only on corporations like the defendant corporation created and organized under the Acts of Congress, but also on corporations created and organized entirely under the laws of the various states and made by those laws, persons resident in said states, having all the rights of natural persons and of citizenship in said states and subject to no visitatorial or other powers of the Federal Government or of the Congress of the United States (in respect to which they are legally in precisely the same relation as are natural persons), but is not imposed on other individuals or persons in said states or on co-partnerships or associations not having a capital stock represented by shares, who are carrying on and transacting the same or similar business under like conditions and in the same localities and having like property and net income.

B. The said Corporation Tax is not uniform even among corporations in that in every state and in almost all localities where the tax would be operative and notably so in the State of Illinois and City of Chicago, where the defendant corporation is situated, there are a great number of corporations, the net income of which computed as the Corporation Tax Law directs, amounts to less than \$5,000 a year, and did not amount to such sum during the year 1909, and that said corporations are equally with natural persons

and co-partnerships exempt from said Corporation Tax, although it is imposed on other corporations doing similar business under like conditions and having an entire net income greater than \$5,000.

C. The said Corporation Tax is not uniform even among corporations in that in almost every state and in almost all localities where the tax would be operative, there are a large number of corporations organized under state laws which derive their income entirely from dividends upon stock of other corporations, joint
19 stock companies, associations and insurance companies, subject to the said Corporation Tax and whose entire income was so derived during the year 1909, and that said corporations by the effect of the law are equally with natural persons and co-partnerships exempted from said Corporation Tax.

D. The said Corporation Tax is not uniform even among corporations, in that in almost every state and in almost all communities where the tax would be operative there are a large number of corporations, also organized under state laws, which derive part of their income from dividends upon stock of other corporations, joint stock companies, associations and insurance companies, subject to said Corporation Tax and part of whose income was so derived during the year 1909 and that the tax upon such corporations is calculated at a different rate from the tax imposed upon other corporations doing similar business under like conditions and having no part of their income derived from dividends upon stock of other corporations, joint stock companies, associations and insurance companies, subject to said Corporation Tax.

E. Your orator avers that the said Corporation Tax is not uniform in that its effect would be to lessen the income from dividends of the shareholders of such corporations as are subject thereto and thus operate as a Federal Income Tax on such persons, many of whom have no other income, while all other persons, resident of the United States, are exempted from any Federal Tax on incomes. Thus an Income Tax is imposed on a very small proportion of the population of the United States, from which all other persons are exempted.

F. The said Corporation Tax is not uniform in its effect on corporations alone even, because of the exemptions therein contained of all labor, agricultural or horticultural organizations, all fraternal
20 beneficiary societies, orders or associations, operating under the lodge system, domestic building and loan associations organized and operated exclusively for the mutual benefit of their members and all corporations and associations organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which enures to the benefit of any private stockholder or individual, and your orator shows that the said exemptions and classifications are arbitrary and unreasonable and based on no classification which is uniform or equitable, and that many other corporations which by the terms of the Corporation Tax Law would be subject to the corporation Tax are equally with those that are thus exempted organized and operated as fully for the mutual benefit of their members as those which are thus exempted.

G. Your orator further shows that if the Corporation Tax were held to be an excise tax and a tax or license fee upon the privilege of doing business as a corporation and thus exercising a corporate franchise, it would not be uniform throughout the United States, because the incidents, privileges, immunities, obligations and liabilities pertaining to a corporate franchise or its exercise are not the same in all the states, but vary widely between different states and even between different classes of corporations in the same state. Thus the shareholders of all banking corporations created by the State of Illinois and organized under the Statutes of Illinois, are by the constitution and laws of the State of Illinois, individually responsible and liable to its creditors over and above the amount of stock held by them respectively, to an amount equal to their respective shares so held for all liabilities accruing while they are such shareholders.

And your orator says that by the National Banking Law, the shareholders of the defendant Bank and the shareholders of
21 all national banks are individually responsible equally and ratably, but not for one another, for all contracts, debts and engagements of the Bank to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount of their shareholdings.

But your orator shows that no such individual liability of shareholders exists in Illinois, in the case of corporations not doing a banking business, and that there is no personal liability on the shareholders of such other corporations, to the creditors of said corporations beyond the amount of their investments in the capital stock.

And on information and belief your orator avers that in some of the states of the United States there is no personal liability beyond the amount of their shareholdings imposed by law on the shareholders of banking corporations created and organized under the laws of said states, and in others there is unlimited personal liability imposed on such shareholders.

Your orator therefore avers that as the privilege of doing business as a corporation—a corporate franchise—is a different thing in one state from that which it is in another and varies according to the legal requirements and enactments of the respective states which create the corporation and is a different thing as to a corporation like the defendant, created by the Federal Government under the National Banking Act from that which it is as to a corporation organized under state laws, and may be a different thing as to different corporations in the same state—a tax on the mere privilege of existing as a corporation and exercising a corporate franchise, is neither uniform as to the different states of the United States nor as to the corporations within each state.

H. And your orator further shows that in many other respects besides those specifically mentioned in this bill of complaint
22 the said Corporation Tax is not uniform as required by Section 8 of Article I of the Constitution of the United States.

Fourteenth. Your orator further shows, that if said Corporation Tax were held not to be a direct tax nor a tax on property or income, but to fall under some other denomination, and if it were also held to be uniform throughout the United States within the meaning and

intent of the Constitution of the United States, it must still be held to be unconstitutional and void as not within the power of Congress to enact and as interfering with the reserved rights and sovereignty of the several states, by which the great majority of corporations made subject to the tax were created, and in conflict particularly with the tenth article of the Amendments to the Constitution of the United States, which reserves to the states a power to grant acts of incorporation as an incident of their sovereignty.

Your orator shows that although called by Congress a special excise tax the Corporation Tax is not an excise tax.

An excise tax, as your orator is advised and believes, is an occupation tax upon the privilege or license to follow a particular occupation or do a particular kind or kinds of business, and not, as is the Corporation Tax, a tax upon the privilege of existing as a corporation and exercising a corporate franchise.

But your orator shows that whether or not the Corporation Tax can be properly regarded as an excise tax, it is a tax either
23 upon the privilege of existing as a corporation or upon the privilege of doing business in a corporate capacity and is in conflict with the Constitution of the United States because the supposed power of Congress to enact it involves the power of Congress to interfere with, control, impair, and destroy the power of the states to grant franchises of corporate capacity, and to interfere with, control, impair and destroy the value and purpose of the franchises and privileges which the states have full power to grant.

Your orator further shows that included in the class of corporations on which the Corporation Tax is imposed are a very great number of public service corporations in the various states which perform public or semi-public functions in the matter of supplying intra-state and intra-municipal transportation and in supplying water and light and other municipal necessities to municipalities in said states. These public service corporations have been in a great number of cases given the power of eminent domain by the state for the purpose of enabling them to carry out their public or semi-public functions and they have thus been respectively made the direct instrumentalities and agents of the states creating them with which Congress has no right to interfere.

And your orator represents that the inclusion of these corporations in the operation of the Corporation Tax Law would by itself render the same unconstitutional and void.

But your orator further shows that in a wider sense all corporate franchises and all rights granted by a state to exist as
24 corporate entities, are instrumentalities of that state in the exercise of its reserved powers and functions and cannot be constitutionally taxed or interfered with by the Congress of the United States.

Fifteenth. Your orator further shows that though denominated in the act an excise tax the Corporation Tax is in reality as he is advised a tax on the incomes of corporations and that as it is an income tax, its provisions are unconstitutional, null and void, in that they impose a tax upon the incomes of many corporations,

derived partly from the bonds of the United States and from the bonds of various states of the United States and from bonds of cities, counties and municipalities in said various states, which bonds are among the means and instrumentalities employed for carrying on the governments which issue them, and are not proper subjects of the taxing power of Congress. Said several states, and the cities, counties and municipalities therein, are independent of the general government of the United States and the respective bonds of the said states and of their governmental agencies, the counties, cities and municipalities therein, are, together with the power of the states to borrow in any form, exempt from federal taxation.

Your orator further shows that as he is informed and believes the bonds of the states, cities, counties and municipalities of the United

25 States which are exempted from federal taxation under the Constitution of the United States amount in the aggregate to a vast sum, of which a very large proportion are held by corporations on which the Corporation Tax purports to be imposed, and that the income and interest from said bonds constitute a considerable proportion of the net income of many of such corporations and that it was and is the intention of Congress and is essential and necessary to accomplish the purposes and general scope of the Corporation Tax to lay and collect such tax on the said income derived by corporations from such state, county and municipal bonds, and that such would be the effect of the said Corporation Tax if it were valid.

Sixteenth. Your orator further avers that the provisions of said Corporation Tax, incorporated in the Act of Congress as aforesaid, are unconstitutional, null and void in that they impair property rights vested prior to the passage of said act and in that they purport to impose a tax on the net income of corporations, which income accrued prior to August 5, 1909, the date on which said act became a law, or else purport to impose a tax on the privilege of doing business as a corporation prior to said August 5, 1909.

26 Seventeenth. Your orator further avers that the provisions of said Corporation Tax incorporated in said Act of Congress as aforesaid are unconstitutional, null and void in that all corporations thereby taxed may be deprived of their property without due process of law in violation of Article V, of the Amendments to the Constitution of the United States.

Eighteenth. Your orator further shows that the provisions of said Corporation Tax incorporated in said Act of Congress as aforesaid are unconstitutional, null and void in that all corporations thereby taxed may be compelled to disclose their private books and papers, in order to make them liable for a penalty or to forfeit their property, and in any event are obliged to make returns of their private business in such manner that they become public records, open to competing and hostile examination, although the said corporations making them may have no public functions nor be affected with a public interest. And special information obtained by the officers charged with the collection of the tax may be made public to all competitors or enemies of any corporation at the discretion of the

President of the United States, all of which provisions are in violation of Articles IV and V of the Amendments to the Constitution of the United States.

27 Nineteenth. Your orator further shows that this suit is brought in good faith and is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance and that he has duly requested the defendant Bank and its directors and each of them in writing to omit and refuse to pay and to refrain from paying said Corporation Tax and to contest the constitutionality of said act, and to refrain from voluntarily making lists, returns and statements to the Collector of Internal Revenue for the Northern District of Illinois (either for the year 1909 or for any subsequent year), and to apply to a court of competent jurisdiction to determine its liability under said act, and that a copy of said request is hereto annexed as Exhibit A, and made a part of this bill of complaint, but that said defendant Bank and a majority of its directors, after a meeting of the directors at which the matter and said request contained in Exhibit A were formally laid before them for action have, as your orator is informed and believes, refused and still refuse and intend omitting to comply with your orator's demand and, as your orator is informed and verily believes, have resolved and determined and intend to comply with all and singular the provisions of said Act of Congress and to pay said tax equal to one per cent of its net income for the year 1909, including therein its rents from real estate and its income from municipal bonds, and to comply also with the provisions of said act in all subsequent years.

28 A copy of the refusal of said defendant Bank to comply with the demand of your orator is hereto annexed as Exhibit B to this complaint.

Twentieth. Your orator further shows that if the defendant and its directors, as they propose and have declared their intention to do, pay said tax out of the net income of the defendant Bank, they will thereby diminish the assets of said Bank and lessen the dividends thereon and the value of all its shares, and that said payment will be a misapplication or diversion of its funds by an illegal payment out of its capital or profits; that the directors of said Bank are at law and in equity responsible for the disbursement of funds of the said Bank; that in that respect they occupy a fiduciary relation towards the said Bank and that any illegal payment of said funds is an improper diversion of said funds by the directors and a violation of their fiduciary duties to said Corn Exchange National Bank, your orator and other stockholders.

Twenty-first. Your orator further shows that the voluntary compliance with the provisions of said Corporation Tax so incorporated in said Act of Congress aforesaid, will expose the defendant Bank to the danger of a multiplicity of suits by its numerous shareholders, and that such numerous suits would work irreparable injury to the business of the Bank, and involve it in great and irreparable damage, to the irreparable damage also of your orator and all its shareholders.

29 Twenty-second. Your orator further shows that this is a suit of a civil nature in equity, that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and arises under the Constitution and Laws of the United States, and involves the construction of the Constitution of the United States and the constitutionality and validity of an Act of Congress.

Twenty-third. And your orator shows that the actings, doings and pretenses of the defendants before set forth are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

Wherefore, and in consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable,

Your Orator prays:

I. That it may be adjudged and decreed that the said provisions imposing a Corporation Tax, incorporated in said Act of Congress approved August 5, 1909, are unconstitutional, null and void.

30 II. That the defendants be restrained from voluntarily complying with the provisions of said act and making the return or statement above referred to and described, which they threaten to make, and from paying the tax aforesaid, either for the year 1909 or for any subsequent year in which the net income of the defendant Bank may exceed the sum of \$5,000.

III. And that your orator may have such other or further or different relief in the premises as to a court of equity may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein and hereby prayed, and may full, true, direct and perfect answer make to the best and utmost of their knowledge, remembrance, information and belief, the said the Corn Exchange National Bank, under its corporate seal, and the said individual defendants, not under oath, an answer under oath being hereby expressly waived, to each and all of the matters and things in this bill of complaint contained and that as fully and particularly as if the same were here repeated, paragraph by paragraph, and they were specially interrogated thereunto;

May it please your Honors to grant unto your orator a *subpoena ad respondendum* issuing out of and under the seal of this Honorable court, to be directed to the said defendants, the Corn Exchange National Bank, Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair,

31 Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hammill and B. C. Sammons, commanding them and each of them on a certain day and under a certain penalty to be therein inserted, to appear before your Honors in this Honorable court and then and there full, true, direct and perfect answer make to all and singular the

premises, and further to perform and abide by such further order and decree as to your Honors shall seem meet.

And also grant unto your orator an order to issue a writ of temporary or provisional injunction restraining the defendants as herebefore prayed until the further order of the court, and that on the hearing of this cause the said injunction be made perpetual.

And your orator as in duty bound will ever pray.

WILLIAM H. MINER,
PECKHAM, BROWN, PACKARD &
WALSH,

Solicitors for Complainant.

EDWARD OSGOOD BROWN,
Of Counsel.

32 United States of America, Northern District of Illinois,
Northern Division.

STATE OF ILLINOIS,

County of Cook, ss:

William H. Miner, being duly sworn, doth depose and say that he is the complainant in the foregoing bill of complaint; that he has read the bill and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief or as matters of law, and that as to those matters he believes it to be true.

WILLIAM H. MINER.

Subscribed and sworn before me this 19th day of January, 1910.

[SEAL.]

CHARLES B. FOOTE,
Notary Public.

33

EXHIBIT A.

CHICAGO, January —, 1910.

To Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill, and B. C. Sammons, Directors of the Corn Exchange National Bank of Chicago.

GENTLEMEN: I am a shareholder in the Corn Exchange National Bank and am informed that the Bank intends voluntarily to comply with the requirements of the provisions relating to a "Corporation Tax" contained in the 38th section of the Act of Congress of the United States entitled "An Act to Provide Revenue, Equalize Duties and Encourage the Industries of the United States and for Other Purposes," enacted at the recent special session of Congress and approved by the President August 5, 1909, and commonly called the Tariff Act. I claim that the said provisions of said Act of Congress purporting to impose a "Corporation Tax" are unconsti-

tutional. As a shareholder in said Bank, I hereby protest against any action of the Bank and its directors in voluntarily complying with said "Corporation Tax" provisions and I request that said Bank and its directors shall refrain from voluntarily complying with any of said provisions and from voluntarily paying the "Corporation Tax" provided for therein (either for the year 1909 or any subsequent year), and from voluntarily making any returns or statements in compliance with said provision to the collector of internal revenue for this district.

I further request that said Bank and its directors shall
34 contest the constitutionality of said act and protect its shareholders and apply to a court of competent jurisdiction to determine its liability under the same, or take such steps as may be necessary to protect the rights of the Bank's shareholders.

Very truly yours,

WILLIAM H. MINER.

35

EXHIBIT B.

CHICAGO, January 12th, 1910.

To William H. Miner, Chicago.

DEAR SIR: Referring to your letter of the 7th instant addressed to the directors of this Bank, we have to say that the Board of Directors at the meeting held this day considered the matter and we enclose a certified copy of the resolutions which they passed in relation to your request.

Yours very truly,

THE CORN EXCHANGE NATIONAL
BANK OF CHICAGO,
By J. C. NEELY, Sec'y.

Enclosure.

CHICAGO, January 12th, 1910.

At a meeting duly and regularly called of the Board of Directors of The Corn Exchange National Bank, held this day, the following resolution was passed:

"Resolved, That the Board of Directors deem it inexpedient to comply with the demand of Mr. William H. Miner on the ground that the failure to comply with the provisions of the Corporation Tax Law would subject the Company to litigation with the United States."

I hereby certify that the foregoing is a true copy of a resolution passed by the Board of Directors of the Corn Exchange National Bank.

[CORPORATE SEAL.]

J. C. NEELY, Sec'y.

(Endorsed:) Filed Jan. 19, 1910. H. S. Stoddard, clerk.

36

And on to-wit: the twenty-fourth day of January, 1910, come the defendants in said entitled cause by their solicitors and enter their appearance in said cause in words and figures following to-wit:

37

Appearance of Defendants.

UNITED STATES OF AMERICA,

*Northern District of Illinois, Eastern Division, ss:*In the Circuit Court of the United States for the Northern District
of Illinois, Eastern Division.

In Equity. No. 29863.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H.
Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler,
Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter,
Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles
L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest
A. Hamill, and B. C. Sammons.We hereby enter the appearance of each of the defendants in the
above entitled cause, and of ourselves as their solicitors.

JUDAH, WILLARD, WOLF & REICHMANN,

Solicitors for Defendants.

NOBLE B. JUDAH,

Of Counsel.

(Endorsed:) Filed Jan. 24, 1910. H. S. Stoddard, Clerk.

38

And on the same day to-wit: the twenty-fourth day of Jan-
uary, 1910, come the defendants in said entitled cause by
their solicitors and filed in the clerk's office of said Court their cer-
tain Demurrer to the bill of complaint in the words and figures fol-
lowing to-wit:

39

Demurrer.

UNITED STATES OF AMERICA,

*Northern District of Illinois, Eastern Division, ss:*In the Circuit Court of the United States for the Northern District
of Illinois, Eastern Division.

In Equity. No. 29863.

WILLIAM H. MINER

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H.
Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler,
Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter,
Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles
L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A.
Hamill, and B. C. Sammons.The Joint and Several Demurrer of Each and All of the Defendants
in the Above Entitled Cause to the Bill of Complaint of William
H. Miner, Complainant Therein.These defendants, by protestation, not confessing or acknowledg-
ing all or any of the matters and things in said Bill of Complaint

contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said Bill, and for cause of demurrer, show that the said complainant has not, in and by his said Bill, made or stated such a case as doth or ought to entitle him to any relief from or against these Defendants, or any of them, touching the matters contained in the said Bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said Bill of Complaint, these Defendants do demur
40 to the said Bill, and to all the matters and things therein contained, and they pray the judgment of this honorable Court, whether they, or either of them, shall be compelled to make any further or other answer to the said Bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

THE CORN EXCHANGE NATIONAL
BANK OF CHICAGO,
CHARLES H. WACKER,
MARTIN A. RYERSON,
CHAUNCEY J. BLAIR,
EDWARD B. BUTLER,
CHARLES J. HULBURD,
CLARENCE BUCKINGHAM,
BENJAMIN CARPENTER,
ISAAC G. LOMBARD,
WATSON F. BLAIR,
EDWIN G. FOREMAN,
CHARLES L. HUTCHINSON,
EDWARD A. SHEDD,
FREDERICK W. CROSBY,
ERNEST A. HAMILL,
B. C. SAMMONS,

Each by JUDAH, WILLARD, WOLF & REICH-
MANN, *Their Solicitors.*

NOBLE B. JUDAH,
Of Counsel.

I certify that in my opinion the foregoing demurrer of the defendants to the Bill of Complaint herein, is well founded in law and proper to be filed in the above cause.

NOBLE B. JUDAH,
Of Counsel for Defendants.

41 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

John C. Neely, being first duly sworn, on oath, deposes and says that he is the Secretary of The Corn Exchange National Bank of Chicago, one of the defendants in the above entitled cause; that he has read the foregoing demurrer to the Bill of Complaint in said

cause; and that the same is not interposed for the purpose of delaying said cause, or any proceedings therein.

JOHN C. NEELY.

Subscribed and sworn to, before me, this 24th day of January, A. D. 1910.

CHARLES B. FOOTE,
Notary Public.

[SEAL.]

(Endorsed:) Filed Jan. 24, 1910. H. S. Stoddard, Clerk.

42. And on the same day to-wit: the twenty-fourth day of January, 1910, being one of the days of the regular December Term of said Court, 1909, in the record of proceedings thereof, in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

43. *Decree of January 24, 1910, Sustaining Demurrer and Allowing Appeal.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29863. In Equity.

WILLIAM H. MINER, Complainant,

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill, and B. C. Sammons, Defendants.

This cause having come on to be heard upon the Bill of Complaint and the Demurrer thereto heretofore filed herein, and the Court being fully advised in the premises,

It is ordered that the said demurrer be and the same is hereby sustained and that the Bill of Complaint of the Complainant herein be and the same is hereby dismissed at Complainant's costs.

Thereupon the above named Complainant states to the Court that in this case the constitutionality of a law of the United States is drawn in question and prays an appeal from said final decree, dismissing the Bill of Complaint herein, direct to the Supreme Court of the United States, pursuant to the statute in such case made and provided. And the Court being fully advised in the premises, and an assignment of errors having been duly filed

It is ordered that the said appeal to the Supreme Court of the United States be and the same is hereby allowed as prayed for upon the Complainant filing his appeal bond in the usual form in the

penal sum of Five Hundred Dollars and the said defendants *not* admit in open court due notice of said appeal and duly waive service of any citations thereon.

44 And on the same day to-wit: the twenty-fourth day of January, 1910, come the complainant in said entitled cause by his solicitors and filed in the clerk's office of said Court his certain petition for appeal, in the words and figures following to-wit:

45 *Petition for Appeal.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29863. In Equity.

WILLIAM H. MINER, Complainant,

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburt, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons, Defendants.

The above named Complainant, conceiving himself to be aggrieved by the order or decree made and entered in the above entitled cause on January 24, A. D. 1910, dismissing the Bill of Complaint herein for want of equity, hereby appeals from said order or decree to the Supreme Court of the United States for the reasons specified in the Assignments of Error filed herein and prays that this appeal may be allowed and that a transcript of the record and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

PECKHAM, BROWN,
PACKARD & WALSH,
Counsel for Complainant.

(Endorsed:) Filed Jan. 24, 1910. H. S. Stoddard, Clerk.

46 And on the same day to-wit: the twenty-fourth day of January, 1910, come the complainant in said entitled cause by his solicitors and filed in the Clerk's office of said Court his certain assignment of errors in words and figures following to-wit:

47

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29863. In Equity.

WILLIAM H. MINER, Complainant,

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO, CHARLES H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons, Defendants.

Now comes William H. Miner, Complainant herein, and files the following Assignments of Error to the decree of the Circuit Court herein, upon which he relies for grounds of reversal on appeal.

1. The said Circuit Court erred in sustaining the demurrer of the defendants to the Bill of Complaint herein.

2. The said Circuit Court erred in dismissing the Bill of Complaint herein at the Complainant's costs.

3. The said Circuit Court erred in not over-ruling the demurrer herein and entering a decree in accordance with the prayer of the Complainant's bill.

WILLIAM H. MINER,
By PECKHAM, BROWN,
PACKARD & WALSH,
His Solicitors.

(Endorsed:) Filed Jan. 24, 1910. H. S. Stoddard, Clerk.

48 And on the same day to-wit: the twenty-fourth day of January, 1910, come the complainant in said entitled cause and filed in the clerk's office of said Court, in said entitled cause a certain Bond on appeal in words and figures following to-wit:

49

Bond on Appeal.

Know all men by these presents, That we, William H. Miner, as principal, and Fidelity & Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto The Corn Exchange National Bank of Chicago, Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburd, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons, in the full and just sum of Five Hundred Dollars (\$500.00) to be paid to the said The Corn Exchange National Bank of Chicago, Charles

H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburt, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill and B. C. Sammons, their certain attorneys, executors, administrators, successors, or assign; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents. Sealed with our seals and dated this 24th day of January, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a term of the United States Circuit Court for the Northern District of Illinois, Eastern Division, in a suit depending in said Court, between William H. Miner, as complainant, and The Corn Exchange National Bank of Chicago, Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburt, Clarence Buckingham, Benjamin Carpenter, Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A.

50 Hamill and B. C. Sammons, as defendants, a decree was rendered against the said William H. Miner, complainant, and the said William H. Miner, having prayed for an appeal to reverse said decree and the same having been allowed by said Circuit Court, and the issuance of a citation having been expressly waived in open court by the said defendants,

Now, the condition of the above obligation is such, that if the said William H. Miner shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM H. MINER. [SEAL.]
FIDELITY & DEPOSIT COMPANY OF
MARYLAND,

[SEAL.]

By ARTHUR C. ARNOLD,

Agent & Attorney in Fact.

Approved by—

KOHLSAAT,

Circuit Judge.

Jan'y 24, 1910.

(Endorsed:) Filed Jan. 24, 1910. H. S. Stoddard, Clerk.

51 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had of record in said Court, in the cause entitled William H. Miner vs. The Corn Exchange National Bank of Chicago, Charles H. Wacker, Martin A. Ryerson, Chauncey J. Blair, Edward B. Butler, Charles H. Hulburt, Clarence Buckingham, Benjamin Carpenter,

Isaac G. Lombard, Watson F. Blair, Edwin G. Foreman, Charles L. Hutchinson, Edward A. Shedd, Frederick W. Crosby, Ernest A. Hamill, and B. C. Sammons, as the same appear from the original records and filed thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District and Division, this twenty-fourth day of January, 1910.

[Seal of Circuit Court U. S., Northern Dist., Illinois, 1855.]

H. S. STODDARD, *Clerk*,
By JOHN H. R. JAMAR,
Chief Deputy Clerk.

Endorsed on cover: File No. 21,980. N. Illinois C. C. U. S. Term No. 754. William H. Miner, appellant, vs. The Corn Exchange National Bank of Chicago, Charles H. Wacker, Martin A. Ryerson, et al. Filed January 26th, 1910. File No. 21,980.



U. S. Supreme Court, D. C.
FILED.

JAN 28 1910

JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1909.

—
No. 754
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412

WILLIAM H. MINER,

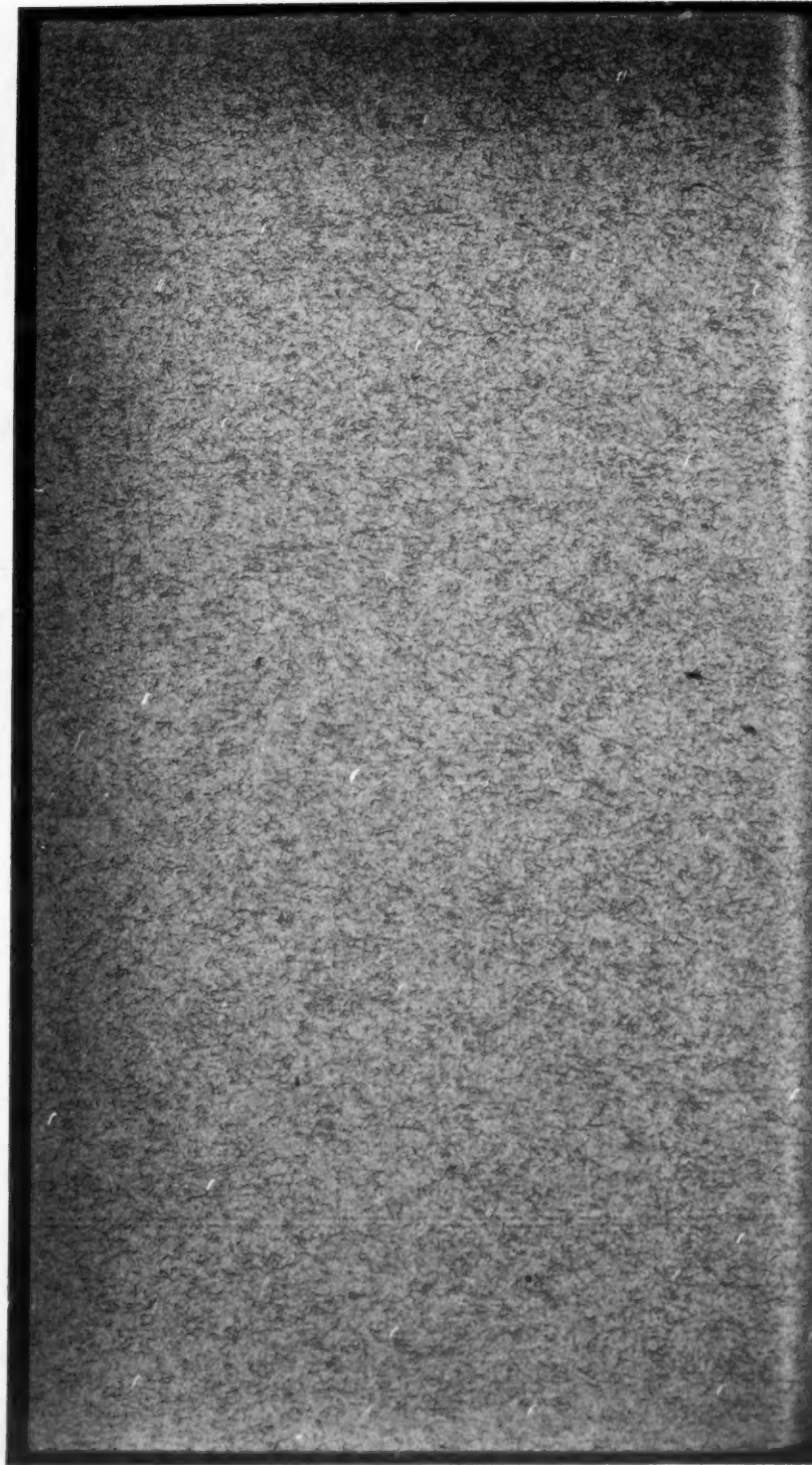
vs.

CORN EXCHANGE NATIONAL BANK ET AL.

—
MOTION TO ADVANCE.
—

ORVILLE PECKHAM,
EDWARD OSGOOD BROWN,
GEORGE PACKARD,
VINCENT J. WALSH,

Counsel for Appellant.



Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 754.

WILLIAM H. MINER, APPELLANT,

vs.

CORN EXCHANGE NATIONAL BANK ET AL.,
APPELLEES.

Appeal from the Circuit Court of the United States for
the Northern District of Illinois, Eastern Division.

Motion to Advance Under Rule 26.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes William H. Miner, the appellant herein, and respectfully moves this honorable court that the above entitled cause may be advanced upon the docket of this court and set down for argument and hearing at an early date to be fixed by the court herein, and for grounds of said motion shows to the court as follows:

I.

In this case William H. Miner filed his bill against the Corn Exchange National Bank and its directors, to restrain the defendants from complying with the provisions

of an act of Congress of the United States entitled: "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, by making and filing with the collector of internal revenue for the first district of Illinois, prior to the 1st day of March, 1910, the statement or return required under the provisions of said act, and by paying on or before June 30, 1910, the tax provided for by said act upon the entire net income of the said defendant Corn Exchange National Bank. The bill further prayed that it might be adjudged and decreed that section 38 of said act, otherwise known and referred to as the Corporation Tax Act, should be adjudged to be unconstitutional and null and void.

II.

The defendants filed a general demurrer to this bill, and upon their motion the demurrer was sustained, the bill dismissed and an appeal to this court prayed and allowed.

III.

The facts as alleged in the bill show that the defendant is the owner of three hundred shares of the capital stock of the corporation of the par value aggregating \$30,000; that the directors of the corporation have determined that it is liable to pay, and that they intend to pay for it to the United States on or before June 30, 1910, the tax provided by the act, and that it is their intention and purpose voluntarily to file with the collector of internal revenue the statement or return, provided for by said act, under oath, of its president, vice-president, or other principal officer, setting forth the assets and income of the corporation, as provided for by the

act in question; and that the directors have taken the position that in each successive year after 1909 they intend voluntarily to pay the amount of the tax provided for by the act.

IV.

The Corn Exchange National Bank of Chicago, as shown by the bill, is a corporation duly organized and carrying on business under the National Bank Act, under the provisions of which act it is authorized to exercise such powers as may be necessary to carry on the business of banking, among other things, by receiving deposits, buying and selling exchange, loaning money and issuing and circulating notes. It is further authorized under the act under which it is organized to purchase, hold and convey real estate necessary for the transaction of its business, or such as may be mortgaged or conveyed in satisfaction of debts to it.

The bill further shows that the bank is the owner of a lease-hold interest in the city of Chicago upon which it has erected a banking building, which building is of value of more than \$2,500,000, and from which said bank derives, by way of rental from tenants therein, an income of not less than \$90,000 per annum. It is further shown by the bill that the bank is the owner of bonds of the United States and of the United States Government Territorial bonds of the Phillipines and Hawaii in the aggregate amount of \$1,700,000, from which it derives an income of about \$44,000 annually.

V.

The bill alleges that the provisions of section 38 aforesaid, referred to as the Corporation Tax, are in conflict with the provisions of the Constitution of the United States, and are null and void for the reasons:

(1) The tax is a direct tax and is not apportioned

among the several States according to their population, as required by section 2, article 1, and paragraph 4 of section 9 of article 1 of the Constitution.

(2) If the tax is not a direct tax but can be held to be a duty, impost or excise, then the provisions of the law are unconstitutional as not being uniform, as required by section 8, article 1 of the Constitution of the United States.

(3) Even if the corporation tax were held not to be a direct tax, nor a tax on property or income, and were also held to be uniform throughout the United States, it is unconstitutional as not being within the power of Congress to enact, since it interferes with the reserved rights and sovereignty of the several States, by which State corporations were created, and is in conflict particularly with article 10 of the amendments to the Constitution of the United States.

VI.

The matters involved herein are of great and general public interest and importance, and unless an adjudication by this honorable court as to the constitutionality of the law in question is speedily obtained, a great number of corporations affected by the provisions of this act will pay the amount of the tax levied against them under a protest, and commence actions to recover the same, thereby involving the representatives of the United States Government in a multiplicity of suits.

VII.

This appellant is advised that a motion to advance under rule 26 was filed herein on January 24, 1910, by the appellant in the case of *Flint vs. The Stone Tracy Company*, No. 747 on the docket of this court. This last

mentioned case involves the constitutionality of the corporation tax law, but this appellant is advised that the questions raised by him in his bill of complaint as aforesaid are in many respects different from and raise other considerations than the considerations and questions raised in said Flint case with respect to the constitutionality of said act.

VIII.

This appellant therefore prays this honorable court that this case may be advanced upon the docket, under the provisions of rule 26 of this court, to be set down at an early date for argument and hearing.

A notice of this motion has been served upon counsel for the appellees and proof of service filed with the clerk of this court, and the solicitor-general of the United States has been notified that this motion would be submitted.

Respectfully submitted.

ORVILLE PECKHAM,
EDWARD OSGOOD BROWN,
GEORGE PACKARD,
VINCENT J. WALSH,

Counsel for Appellant.

January 28, 1910.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1909.

WILLIAM H. MINER,
Appellant,

vs.

THE CORN EXCHANGE NATIONAL BANK OF CHICAGO
AND OTHERS.

Appeal from the Circuit Court of the United States for the
Northern District of Illinois.

STATEMENT OF THE CASE.

This cause, No. 754 on the docket of the court, is like the preceding one No. 753 (*Fred W. Smith, Appellant, v. The Northern Trust Company and others, Appellees*), an appeal from a decree of the Circuit Court of the United States for the Northern District of Illinois, sustaining a general demurrer to a bill in equity filed by the complainant, and dismissing the bill at complainant's costs. The two causes, *Smith v. The Northern Trust Company and Others* and *Miner v. The Corn Exchange National Bank and Others*, were begun together in the court

below. The same respective counsel represented the respective parties complainant and defendant in them, and they were heard, disposed of and appealed at the same time.

The allegations in the bills of the respective complainants do not differ, except in a very few particulars which we shall set out in the short brief and argument which we purpose herewith to submit.

It seems sufficient, therefore, in this statement, to do little more than to refer to the brief and argument filed by us in the preceding cause, *Smith v. The Northern Trust Company*, No. 753, and to say that in this case, as in that, the only question involved is the constitutionality of Section Thirty-Eight of the Act of Congress entitled "An Act to Provide Revenue, Equalize Duties, and Encourage Industries of the United States, and for Other Purposes," approved August 5, 1909, said section being commonly known as "The Corporation Tax Law" of the United States.

As the entitlement of the appeal shows, the principal defendant in this cause is a national bank.

The complainant in this cause is an owner of three hundred shares of the Corn Exchange National Bank of Chicago. He demanded of the directors of that Bank that they should refrain from voluntarily

making any return or voluntarily paying any tax under the provisions of the "Corporation Tax Law" on the ground of its unconstitutionality. The directors declined to accede to that request and announced their determination to do both.

The net income of the Bank for the year 1909, on which the tax would fall or by which it would be measured, was for that year more than \$500,000. The Bank has real estate in the form of a leasehold interest for 99 years in land in Chicago, on which it has built a banking building, part of which it occupies itself and part of which it rents to various tenants. The leasehold and building belonging to the defendant Bank are worth \$2,500,000, and the income derived therefrom by the defendant Bank amounts to not less than ninety thousand dollars per annum, after all taxes are paid. The Bank is the owner of United States bonds to the amount of \$1,175,000 and of United States Government territorial bonds of the Philippines and Hawaii to the amount of \$530,000, and derives an income of about \$24,000 annually from its investments in bonds of the United States, and of about \$20,000 annually from its investments in the said territorial bonds.

When the directors announced their determination voluntarily to make the returns and payment described, the complainant brought his bill against

the Bank and them for an injunction, setting up the foregoing facts and also alleging, as has been stated the same grounds for holding the law unconstitutional as were set forth in the suit of *Smith against The Northern Trust Company*. Of course, however, he could not, as did the complainant in that case, claim that the principal defendant was in any sense an instrumentality or agency of the State of Illinois.

In that particular alone is there any substantial difference between this cause and that of *Smith v The Northern Trust Company et al.*

ASSIGNMENT OF ERRORS.

The assignment of errors on the record are simply that the Circuit Court erred in sustaining the demurrer of the defendants; that it erred in dismissing the bill of complaint; and that it erred in not overruling the demurrer and entering a decree in accordance with the prayer of the bill.

This is equivalent to the particular ground on which we rely for reversal, which is, that Section 38 of the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties and encourage industries of the United States, and for other purposes," is unconstitutional, null and void for the reasons set forth in the bill, and that the court below should have so found and enjoined the defendants from complying with it as prayed.

BRIEF OF ARGUMENT.

This case differs from the case of *Smith v. The Northern Trust Company et al.*, immediately preceding it on the docket, only in the fact that the principal defendant is a national bank instead of a corporation created by the State of Illinois.

Therefore we adopt for this case the brief and argument in the *Northern Trust Company* case—pointing out in addition only that the Corporation Tax Law if invalid against the great mass of corporations intended to be affected by it, cannot be held valid as to national banks and other corporations created by federal authority.

A tax falling only on such corporations was not within the intention of Congress.

If it fails as to state-created corporations therefore, it must fail as to national banks.

Pollock v. Trust Company, 158 U. S., 601.

Pointdexter v. Greenhow, 114 U. S., 270.

Sprague v. Thomson, 118 U. S., 90.

Warren v. Charlestown, 2 Gray, 84.

ARGUMENT.

As set forth in the statement of the case prefixed hereto, this cause differs so little from that of *Smith v. The Northern Trust Company and Others*, No. 753, immediately preceding it upon the docket and to be heard with it, that it would be wholly unjustifiable for us perfunctorily to repeat herein that which we have said in that cause. We refer, therefore, to the brief and argument filed in No. 753, in which, to the best of our ability, we have set forth our reasons for holding the Corporation Tax an invalid enactment and adopt that brief and argument herein.

We cannot claim that there is any reason for holding the Corporation Tax invalid against National Banks generally, or against this particular Bank, additional to those which we have urged against its validity as applied to all corporations. On grounds of expediency and abstract justice, however, especial reasons for holding it a most ill-advised and unfortunate imposition on these fiscal agencies of the United States do exist, and it was those reasons undoubtedly which led to the introduction into the executive message which was the genesis of this tax, of the recommendation to except from it Na-

tional Banks (correctly characterized as "otherwise taxed") a recommendation, however, not adopted. The National Banks are indeed "otherwise" taxed. They pay to the United States a tax each half year on upon the average amount of their notes in circulation. But this is the very least of their burdens. They are subject to the taxation directly of their real estate by state, county and municipal authority, and indirectly, in Illinois at least, and we presume substantially in the same manner in all the states, by the taxation of their shares of capital stock in the hands of the stockholders, of which taxation they are in effect compelled by law to become collectors. The difference in practical effect between this taxation and the taxation of the banks directly is nothing except as the allowed and pursued method gives greater certainty of assessment and collection.

These taxes, except the federal tax on the note circulation, it is true, are theoretically, taxes which individual citizens of the taxing state must also pay, but were it a matter which could be properly laid before the court, there would be no difficulty in showing definitely that which, as a matter of common report, we all know to be true, that because of the absolute publicity which has to be given to the financial condition of National Banks, they

are really subjected to a degree and rate of local taxation in comparison with other tax payers which practically renders them in many communities the main support of the municipal treasury.

National Banks, moreover, are compelled to base their circulation,—the circulation which is semi-annually taxed,—on Government bonds, for which, therefore, they furnish the principal market. Those bonds were issued in every case under laws which exempted them from taxation. They were purchased under that promise. If this Corporation Tax Law is valid, they will be taxed. No intellectual ingenuity can disguise the fact that under this law from the income from them is to be deducted one per cent to go to the Government which issued them under the provision that they should not be taxed. The patent injustice of this led to a question on the construction of the law and the Treasury Department is said to have entertained doubts as to the propriety of the inclusion of these bonds within the sources of the income which is to be, as the defenders of the law claim, the mere “yard stick” or measure for the “privilege” or “license” fee, which they declare the Corporation Tax to be.

But the Department of Justice ruled that the income from the bonds was income which must be considered in making up the return and computing

the payment. No other ruling would have been at all consistent with the contention of the Government absolutely necessary to sustain the tax; that it is not an income tax or a tax on incomes, but an excise tax measured by something on which it does not fall.

All this, however, would have little to do with our argument for this court were we not desirous of emphasizing the proposition, that although we have no *additional* reason to offer in behalf of National Banks against the validity of the Corporation Tax, yet that every reason urged by us in that behalf, in the case of *Smith v. The Northern Trust Company*, is fully applicable to its validity as against National Banks.

Because National Banks are the creations of Congress and because Congress, as distinguished from the states, may pass laws impairing the obligation of contracts, we should hesitate to claim that Congress had not the right to impose a tax either on their privilege of existence or on their privilege of doing business, as well as on their property.

If the Corporation Tax had been laid therefore *only* on National Banks, there would have been but two questions to answer in relation to its validity; Is it a direct tax and therefore invalid because unapportioned? If not, is it "uniform" under the

implicit and explicit provisions of the Constitution?

There would not have been the further objection that Congress had attempted to tax the powers, instrumentalities and agencies of the states.

But Congress did not lay the Corporation Tax on National Banks alone, and the only purpose with which we have alluded to the injustice and inexpediency of placing this additional burden on them, is to call attention to the utter impossibility of entertaining the theory that Congress would ever have passed this "entire scheme" of taxation, had it been deemed possible that it could fall on National Banks alone.

We do not know—and we do not suppose—that the Department of Justice will make any claim that if the law should fail against corporations created by the states it could be held good against National Banks because they are creations of the federal government.

But it was to avoid any possible contingency that the court (if the case of a National Bank was not before it) might place a decision on the law on grounds which would leave undecided its effect on such banks that led Mr. Miner, the complainant in this suit, to follow Mr. Smith's proceeding against the Northern Trust Company, with another against a National Bank.

Knowing of Mr. Smith's protest, request and denial, and of the bill which he was preparing, Mr. Miner would but for this consideration have been quite content to have allowed the issue of that case to determine the extent of his own rights against the Corn Exchange National Bank.

And so now, he is content to adopt the argument made in that case as his contentions in the present one, supplementing it only by insisting that as nothing could be more fanciful than to suppose that Congress would have ever enacted this tax had all state-created corporations been eliminated, leaving hardly any corporations to be taxed but National Banks, there is an added significance given in this case to the authorities which in *Smith v. The Northern Trust Company* we cited to show that this scheme of taxation—if it failed in any material part—must fail altogether.

Pollock v. Trust Company, 158 U. S., 601.

Pointdexter v. Greenhow, 114 U. S., 270.

Sprague v. Thomson, 118 U. S., 90.

Warren v. Charlestown, 2 Gray, 84.

As we have said on pages 87 and 88 of our argument in *Smith v. Miner*:

“The Corporation Tax as attested by all the arguments of its advocates, by the common knowledge that without the inclusion of the corporations which furnish transportation, water,

light, intelligence transmission, or perform other public or semi-public functions, the revenue to be expected from the tax would be relatively insignificant, and by the internal evidence of its provisions for publicity, which in the case of merely private business enterprises can find no plausible pretext of justification, was perhaps framed more for the purpose of falling on public service corporations than on any others. The inclusion of these corporations within the operation of the law is part of the warp and woof of the law constituting one entire scheme of taxation. If these corporations cannot be constitutionally taxed under it, therefore we submit the entire scheme must fail, and the law as a whole be declared invalid on the doctrine declared in the *Pollock* cases."

If the law is to be declared invalid against all other corporations except those created by the action of the federal government, this line of argument has, of course, still stronger force. The condition of National Banks is already subject to publicity in a fuller sense even than is required by this law. They form a relatively small portion of the corporations taxed. They were included under it against the original recommendation of its framers. They should and would be rather the favored than the especially burdened corporations of the jurisdiction which created them. They are already heavily taxed. No presumption can possibly be indulged that this law would have been passed had it expressly been limited to them.

Therefore all that we have urged in *Smith v. The*

Northern Trust Company et al. as to the invalidity of the law because it is laid on franchises and privileges which are the powers, instrumentalities and agencies of the states, is in point in this case as well as in that. If the law fails for those reasons against other corporations it must fail against National Banks, because it has thus failed against such other corporations.

If the Corporation Tax is held to be a direct income tax as to real estate and invested personalty, it plainly falls in the case of National Banks most directly on the income from those sources. Invested personalty in government and in municipal bonds, as well as in all other kinds of personalty, is the greatest source of their income.

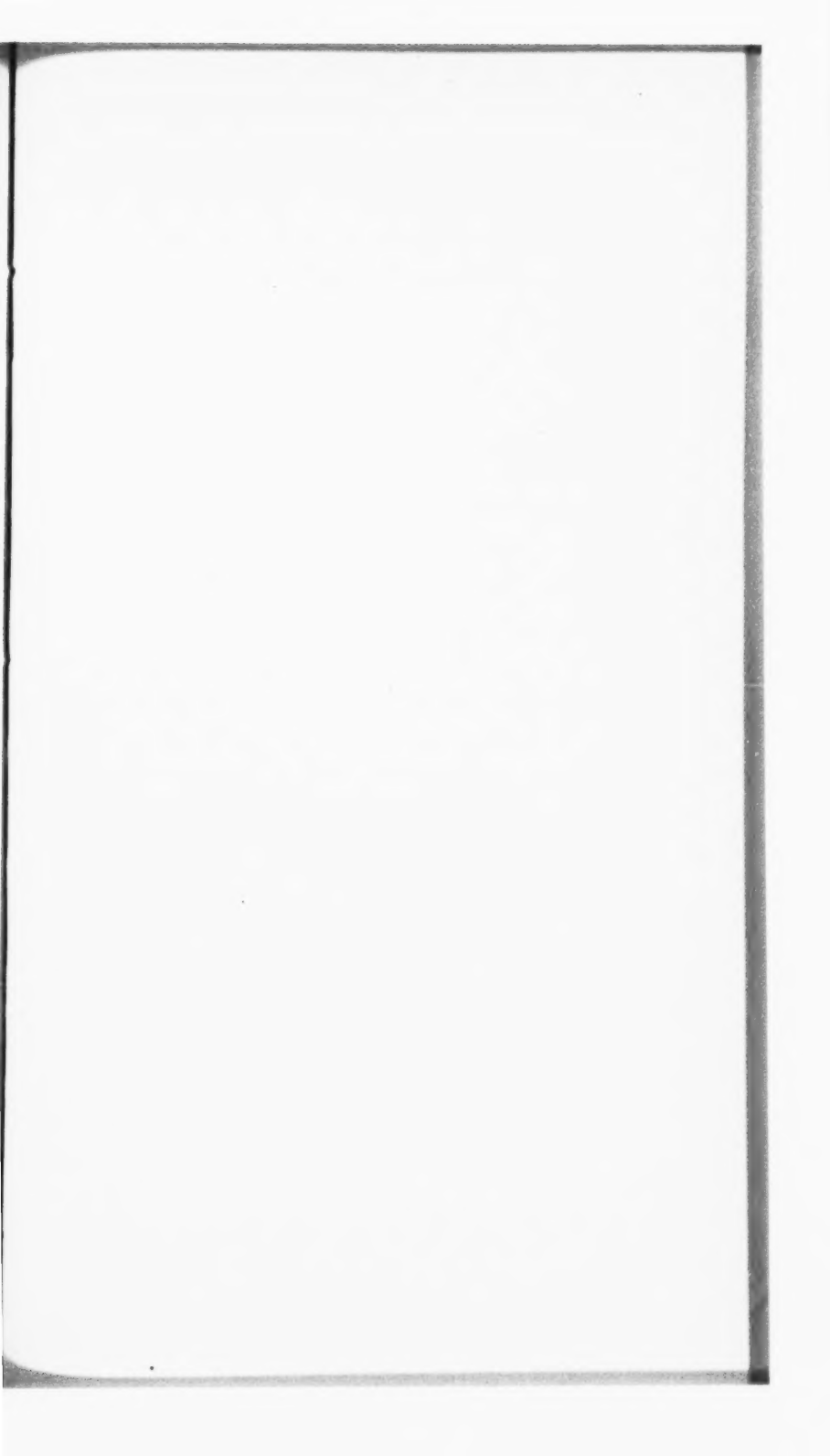
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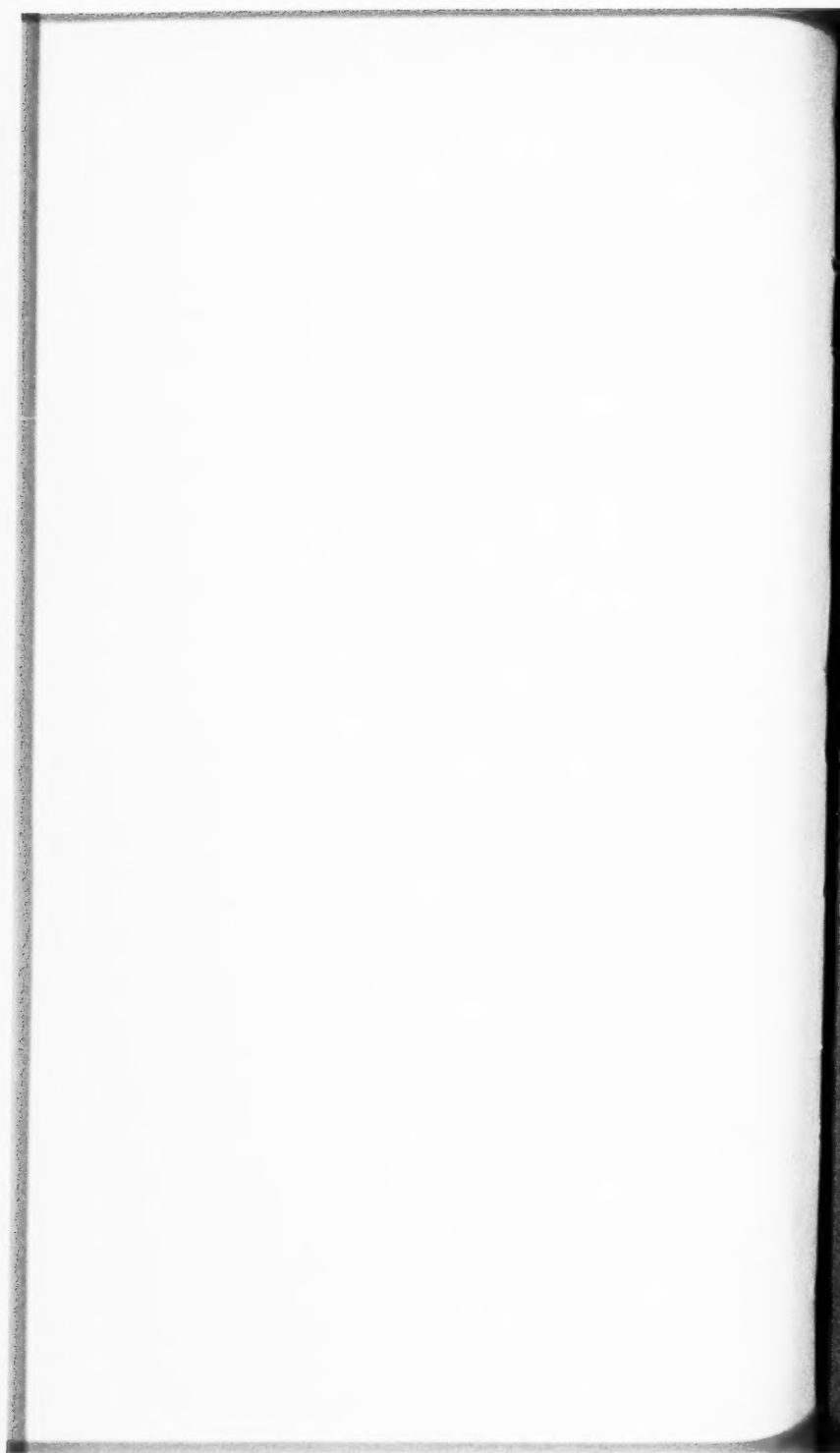
Repeating therefore our request that in the consideration of this cause the court should consider our brief and argument in No. 753—*Smith v. The Northern Trust Company et al.*—we refrain from a renewed discussion of the law.

EDWARD OSGOOD BROWN,
Of Counsel.

GEORGE PACKARD and
VINCENT J. WALSH,
Also of Counsel.

PECKHAM, BROWN, PACKARD & WALSH,
Solicitors for Complainant.





Office Supreme Court U. S.
FILED
JAN 16 1911
JAMES H. McKENNEY,
Clerk.

IN THE

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OCTOBER TERM, A. D. 1909.

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Appellees.

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(21980)



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